IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2479 OF 2007

Shri Dattatraya Sopan Takale ...Petitioner

Versus

Shri Bhairavnath (Dev) Deosthan Trust,
Saswad & Ors. ...Respondents

Shri P.B.Shah for the Petitioner.
Shri S.G.Karandikar for the Respondent Nos.1/1 to 1/3.
Ms V. Mhaispurkar, A.G.P for the Respondent Nos.2 to 4.

CORAM : ABHAY S.OKA, J.
DATED : APRIL 26, 2007.

P.C.:

1. Rule. Shri Karandikar waives service for the Respondent Nos.1/1 to 1/3. The learned A.G.P waives service for the second to fourth Respondents. Considering the facts and circumstances of the case, taken up for hearing forthwith.

2. The challenge in this Writ Petition under Article 227 of the Constitution of India is to the order dated 29th March, 2007 passed by the third Respondent herein i.e the District Collector of Pune. It appears that the said order was passed by the third Respondent on the basis of an Application made by the Respondent Nos.1/1 to 1/3 and others to the Deputy Chief Minister of the State of Maharashtra. In the said Application it was stated that the first Respondent was entitled to

land bearing survey No.301 admeasuring 3 Hectare and 23 Are situated at Saswad, Taluka Purandar, District Pune which is at present possessed by the Petitioner. It was contended in the Application that provisions of the Bombay Tenancy of Agricultural Lands Act, 1948 were not applicable to the said land. It appears that on the basis of the said Application made to the Deputy Chief Minister, a report was submitted by the second Respondent to the third Respondent. After perusing of the said report, on 29th March, 2007 the third Respondent issued a communication to the second Respondent stating therein that the provisions of the said Act of 1948 were not applicable to the land in question as the said land was a Devasthan Inam Land. By the said communication, the third Respondent directed the second Respondent to take over possession of the said land from the Petitioner-agricultural tenant and handover possession thereof to the Respondent Nos.1/1 to 1/3.

3. The submission of the learned counsel appearing for the Petitioner is that the order passed by the third Respondent was illegal and without jurisdiction. He submitted that the order was passed without giving an opportunity of being heard to the Petitioner. He pointed out that the order was passed only on the basis

of the application made by the Respondent Nos.1/1 to 1/3 to the Deputy Chief Minister. The learned counsel appearing for the Respondent Nos.1/1 to 1/3 fairly stated that the said Respondents will adopt due process of law for obtaining possession of the land in question in possession of the Petitioner. The learned A.G.P supported the impugned order.

4. On plain reading of the impugned order it is obvious that the said order was passed in breach of principles of natural justice in as much as no notice was given to the Petitioner and no opportunity of being heard was given to the Petitioner. It is not clear from the order as to which power the third Respondent has exercised while passing the said order. It is obvious that the said order was passed on the basis of the report of the second Respondent submitted to the third Respondent. The perusal of the report shows that the second Respondent observed that right of an agricultural tenant in respect of the said land is not extinguished. It is obvious that the order impugned dated 29th March, 2007 cannot be upheld and the same deserves to be quashed and set aside.

5. Hence, I pass the following order:

(i) The impugned order dated 29th March, 2007 (Exhibit 'K' to the Petition) is hereby quashed and set aside.

(ii) It will be always open for the Respondent Nos.1/1 to 1/3 to take out appropriate proceedings for recovery of possession of the land in question which is admittedly in possession of the Petitioner.

(iii) It is made clear that no adjudication has been made by this Court as regards the rights of the contesting parties in respect of the land in dispute.

(iv) Writ Petitioner is allowed in above terms with no orders as to costs.

JUDGE